

EXHIBIT “6”

82kyfesc

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Original

UNITED STATES OF AMERICA,

v.

92 Cr. 82 (JFK)

SAMUEL FESTINGER,

94 Cr. 288 (JFK)

Defendant.

February 20, 1998
10:30 a.m.

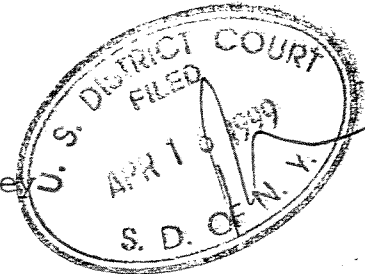
Before:

HON. JOHN F. KEENAN,

District Judge

APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
JOHN MCENANY,
Assistant United States Attorney



CHARLES A. ROSS, ESQ.,
Attorney for Defendant
767 Third Avenue
New York, New York

ALSO PRESENT:

JAMES BLACKFORD, Probation Officer SDNY

WILLIAM CONYERS, Probation Officer EDNY

82kyfesc

1 THE COURT: This is in the matter of United
2 States against Samuel Festinger.

3 How are we going to proceed?

4 MR. McENANY: Your Honor, I thought that it might
5 make most sense for me to ask some questions designed to
6 bring out the general structure of Mr. Festinger's business,
7 bank accounts and ask him about a few specific checks that
8 we have run across, but not to attempt to do, in front of
9 the court, a full probing into the business, which I think
10 would take too much of the court's time.

11 THE COURT: You have no objection to proceeding
12 that way, Mr. Ross?

13 MR. ROSS: No objection. We permit Mr. Festinger
14 to take the stand and be sworn.

15 THE COURT: Obviously, he does have Fifth
16 Amendment rights.

17 MR. ROSS: Absolutely.

18 THE COURT: You are waiving them?

19 MR. ROSS: Yes.

20 THE COURT: Come up, Mr. Festinger.

21 MR. ROSS: Before we start, let me inform the
22 court that I have informed Mr. Berkritsky about the trucks
23 so the court is aware, and I told Mr. McEnany that he want
24 to ask a couple of questions about them. We informed him
25 where the trucks are and said to him he can go pick them

82kyfesc

1 or we will deliver them to a spot he decided upon.

2 We received a payout letter from Federal
3 Financial. Mr. Festinger will in no way stay without those
4 trucks being sold. We are taking steps to have that done.
5 I just want the court to know that.

6 SAMUEL FESTINGER,

7 the defendant, having duly affirmed,
8 testified as follows:

9 THE COURT: You may proceed.

10 DIRECT EXAMINATION

11 BY MR. MCENANY:

12 Q. Mr. Finger, I am going to ask you a series of
13 questions about your business, occupation, other
14 money-making activities you are involved with, and the time
15 frame I am focusing on is 1997 until today, just for that
16 period of time.

17 Would you tell us during that period of time what
18 business, occupation and other activities you have been
19 involved in for the purpose, even if not successful, of
20 generating income?

21 A. I basically sell fuel oil, do service for homes
22 that receive the fuel oil and some that don't receive fuel
23 oil, clean fuel oil tanks and done some work on vehicles,
24 repair and so on.

25 Q. You say some work on vehicles and repair.

82kyfesc

4

Festinger - direct

1 What are you referring to there?

2 A. Repair, I'm talking about garage repair, since we
3 have had mechanics, they repair vehicles for either for sale
4 or for our own equipment.

5 Q. These activities that you engaged in, do you
6 engage in them personally, do you engage in them through
7 companies or is it a combination of the two?

8 A. It's, it's a corporate company level.

9 Q. Will you tell us, then focusing on this time
10 period, what companies or entities or corporations did you
11 use to engage in any of these business activities? Just
12 list us the names for the moment.

13 A. City Fuel, H&M Utilities, General Oil, T.T.
14 Distribution and AAA Discount Fuel.

15 Q. Any other companies?

16 A. No.

17 Q. In those companies, is there anybody other than
18 yourself with whom you share any of the earnings? Are there
19 any partners, silent partners to whom you owe anything at
20 all concerning the income of that business?

21 A. No.

22 Q. For H&M Utilities, will you tell us where that is
23 located and what the general nature of that business is?

24 A. Its located 156 Sullivan Street. The primary
25 nature of the business was --

82kyfesc

5

Festinger - direct

1 THE COURT: That's in Brooklyn, right?

2 THE WITNESS: In Brooklyn.

3 THE COURT: All right.

4 Q. I'm sorry. The primary nature of that business?

5 A. Yes, the primary nature of that business was, is,
6 was the holding of equipment, trucks and the deliveries that
7 we -- the delivery system that we used for the fuel oil.

8 Q. When you say delivery system, are you talking
9 about equipment, are you talking about personnel and
10 procedures?

11 A. Delivery of fuel through trucks.

12 Q. What is the telephone number or telephone numbers
13 that are associated with H&M Utilities?

14 A. H&M doesn't have any specific phone number, other
15 than 522-1554.

16 Q. 522-1554 is subscribed to in what name?

17 A. Is listed under Best Tank Cleaning Service.

18 THE COURT: Best Tank Cleaning Service?

19 THE WITNESS: Correct.

20 Q. I take it that's not an active business?

21 A. No.

22 Q. And does H&M Utilities have any employees?

23 A. No, there is no payroll for H&M Utilities.

24 Q. Is there anybody who answers the phone on behalf
25 of H&M Utilities? If somebody wanted to call H&M Utilities,

82kyfesc

6

Festinger - direct

1 who, if anybody, would pick up the phone?

2 A. No one.

3 Q. And AAA Discount Fuels, where is that located?

4 A. At 156 Sullivan Street, Brooklyn.

5 Q. Any telephone number other than the Best one that
6 you just told us about?

7 A. No, it's the only one that currently exists.

8 Q. And what is the business of AAA Discount Fuels?

9 A. To sell fuel oil on a retail basis.

10 Q. And City Fuel, where is that located?

11 A. At 156 Sullivan Street, Brooklyn.

12 Q. And what is the nature of the business of that?

13 A. It also sells fuel on a retail level.

14 Q. Does that have any employees?

15 A. No.

16 Q. I didn't ask you about AAA. Does that have any
17 employees?

18 A. No.

19 Q. Did City Fuel used to be located at 1204 Avenue
20 U?

21 A. City Fuel has a post office box at 1204 Avenue U,
22 but the real business take place at 156 Sullivan Street.

23 Q. What is 1204 Avenue U?

24 A. It was a box, an address that was used for the
25 name of City Fuel to show that City Fuel can -- is located

Festinger - direct

1 in Brooklyn in that area for homeowners who wanted to
2 purchase fuel from someone who may have been local.

3 Q. 1204 Avenue U, is that an apartment? If somebody
4 sent mail to 1204 Avenue U in the name of City Fuel, who
5 would pick it up and do something with it?

6 A. I would pretty much pick it up from a box there
7 that exists. It's like a mail drop facility.

8 Q. What about General Oil Industry, where is that
9 located?

10 A. At 156 Sullivan Street, Brooklyn.

11 Q. Any employees?

12 A. No.

13 Q. And what is the nature of that business?

14 A. Likewise, retail sales of fuel.

15 Q. And what connection does that business have with
16 4416 18th Avenue in Brooklyn?

17 A. That's the location or address for General Oil,
18 again, for advertising sake if someone wanted a local oil
19 company in that area.

20 Q. And what is at 4416 18th Avenue?

21 A. It's a mail drop location.

22 Q. Is there a box there that says --

23 A. Yes, there is a box, 164.

24 THE COURT: When you say it's a mail drop
25 location, it's not a post office box, it's a private place?

82kyfesc

8

Festinger - direct

1 THE WITNESS: Yes.

2 THE COURT: What is it? Is it a home or an
3 office? What kind of place is 441618th Avenue?

4 THE WITNESS: It's a store that does -- sells
5 balloons and other things like that.

6 THE COURT: Balloons?

7 THE WITNESS: Balloons and also has post
8 office -- boxes, I should say, mail drop boxes. It's a
9 service that they provide.

10 THE COURT: Okay.

11 BY MR. MCENANY:

12 Q. T.T. Distribution, where is that located?

13 A. That is located at 156 Sullivan Street as well,
14 Brooklyn.

15 Q. And does that also use the 4416 18th Avenue mail
16 address?

17 A. Yes, it does.

18 Q. And does that have a telephone number?

19 A. No.

20 Q. How about General Oil, does that have a telephone
21 number?

22 A. No.

23 Q. City Fuel?

24 A. No.

25 THE COURT: Does T&T Distribution have any

82kyfesc

Festinger - direct

1 employees?

2 THE WITNESS: Yes, sir, it does.

3 Q. Who are those employees?

4 A. Naturally, it varies with the ~~season~~. There
5 would be more employees when labor is necessary, but the
6 primary employees are during that period ~~Sam Festinger~~,
7 myself, Rachel Weiss, possibly Teddy Morosky at some point,
8 Francisco Arbuzi.

9 THE COURT: So that's the only one of the
10 companies that has a payroll?

11 THE WITNESS: Correct, sir.

12 Q. And that is in the business of retail ~~fuel~~
13 distribution?

14 A. It's the name that is used on the, ~~on the truck~~
15 for the transportation of the petroleum.

16 Q. You say truck. What physical assets ~~do any of~~
17 these companies that we have just discussed have?

18 A. There's no physical real assets for ~~any of the~~
19 companies, other than -- well, the T.T. possibly have just
20 the trucks.

21 Q. T.T. has how many trucks?

22 A. About five trucks on the premises.

23 Q. And are those trucks parked at 156 Sullivan
24 Street when they are not in use?

25 A. Yes.

82kyfesc

10

Festinger - direct

1 Q. And do they have painting on them, signs on them
2 T.T. Distribution? Is that how they are indicated?

3 A. Yes, they have T.T.T. transport, petroleum
4 transport.

5 Q. And does T.T. own those trucks free and clear, or
6 what is their financial status?

7 A. We've -- bookkeepingwise, we allocated that I own
8 them personally, but, yes, they would be categorized as
9 T.T.'s equipment if --

10 THE COURT: Maybe I don't understand. I don't
11 understand. Could you read that to me. Maybe I didn't hear
12 it.

13 (Record read)

14 THE WITNESS: Well, strike the "if," and they are
15 free and clear.

16 THE COURT: So they are free and clear, there is
17 no money owed on them?

18 THE WITNESS: Correct.

19 THE COURT: And who is the registered owner with
20 the Motor Vehicle Bureau of the trucks?

21 THE WITNESS: It would be CDL or Carl Transport.

22 THE COURT: Carl Transport?

23 THE WITNESS: Correct.

24 THE COURT: What does Carl Transport lease them
25 to T.T.?

Festinger - direct

1 THE WITNESS: Correct, sir.

2 THE COURT: Who is Carl Transport?

3 THE WITNESS: It's basically me, either way.

4 THE COURT: Where is Carl Transport's office?

5 THE WITNESS: It has no office other than 156
6 Sullivan Street. It has a mail receiving address in New
7 Jersey.

8 THE COURT: And what business is Carl Transport
9 in?

10 THE WITNESS: Carl Transport is not officially a
11 business, it's just used to register vehicles, so it's in
12 the transportation business.

13 THE COURT: Is it a corporation?

14 THE WITNESS: No, sir.

15 THE COURT: Could I ask you this:

16 The five fuel oil companies, City Fuel, H&M,
17 General Oil, T.T. Distribution and AAA Discount Fuel, are
18 they all corporations?

19 THE WITNESS: City Fuel is a corporation, H&M is
20 a corporation.

21 Which were the other ones? I'm sorry.

22 THE COURT: General Oil.

23 THE WITNESS: General Oil is a corporation, yes.

24 THE COURT: T&T Distribution?

25 THE WITNESS: I believe, yes, it's a corporation.

82kyresc

12

Festinger - direct

1 THE COURT: And AAA Fuel?

2 THE WITNESS: Yes, that is a corporation.

3 THE COURT: Are you the president of all five
4 corporations?

5 THE WITNESS: Yes.

6 THE COURT: And Carl Transport is not a
7 corporation?

8 THE WITNESS: No, sir.

9 THE COURT: And do each of the corporations file
10 tax returns?

11 THE WITNESS: Yes.

12 THE COURT: And did they file tax returns in
13 1997?

14 THE WITNESS: Yes, I believe there was -- if they
15 weren't individual, they may have been in a combined form,
16 yes.

17 THE COURT: You mean there was one tax return for
18 the five different companies?

19 THE WITNESS: No, sir, they were different tax
20 returns. I don't remember. There may have been one that
21 was combined for two, the two corporations.

22 THE COURT: And did you draw a salary from any
23 one of the five companies in 1997?

24 THE WITNESS: City Fuel, yes.

25 THE COURT: And any other company did you draw a

82kyfesc

13

Festinger - direct

1 salary from?

2 THE WITNESS: Possibly General Oil.

3 THE COURT: How about T&T Distribution? You said
4 that that was the only company that had people on payroll.

5 THE WITNESS: Yes, sir.

6 THE COURT: Did you draw a salary from T&T?

7 THE WITNESS: Yes, sir.

8 THE COURT: Are you drawing a salary from T&T
9 now?

10 THE WITNESS: Yes, sir.

11 THE COURT: What do you draw?

12 THE WITNESS: I, I guess the actual check is \$800
13 for every two week period, a check.

14 THE COURT: \$400 a week?

15 THE WITNESS: Corrects.

16 THE COURT: And how about General Oil?

17 THE WITNESS: No. There is no real payroll for
18 any of the other corporations.

19 When I say -- when I was answering the question
20 about drawing salary, I meant yes, I do take advances or
21 reductions of loans from the other companies.

22 THE COURT: Did you file an individual or
23 personal income tax in 1997 for the tax year 1996?

24 THE WITNESS: Yes, sir, I did.

25 THE COURT: Go ahead, Mr. McEnany.

82kyresc

14

Festinger - direct

1 BY MR. McENANY:

2 Q. I want to ask you something about the income and
3 expenditures of each of those companies.

4 H&M Utilities Transport, Inc., again, for 1997
5 and coming up to the present, on a monthly basis, what, if
6 any, revenue does H&M Utilities have?

7 A. None at this time, and in 97 I don't believe they
8 had much. I don't have my records in front of me, but there
9 was no real revenue.

10 Q. And what about expenses?

11 A. There may have been some expenses for the
12 equipment or the trucks if they were put on. I don't know.

13 Q. What types of expenses would be associated with
14 H&M Utilities?

15 A. Possibly repair equipment, parts for the trucks,
16 possibly insurance. I don't have the records in front of
17 me. If I look at them, I can --

18 Q. If it had expenses and no income, how did it end
19 up paying for those expenses?

20 A. Primarily through the main accounts, which would
21 be either City Fuel or General Oil or AAA Discount.

22 There, there was at some point an H&M account. I
23 don't remember at what point that was closed.

24 Q. Let me ask again before I get to bank accounts,
25 AAA Discount Fuels, Inc., during the period of time we are

82kyfesc

15

Festinger - direct

1 talking about, what income did it have, if any?

2 A. Nothing significant that I could recall. I could
3 look at the records for more specific detail.

4 AAA Discount generated sales as a name. There
5 may have been some small income as well, but it all went,
6 wound up during that period under the City Fuel name.

7 Q. During that period of time, did AAA Discount sell
8 fuel to homeowners or other entities that you did fuel oil
9 business with?

10 A. Yes.

11 Q. And how did AAA fuel arrange for those purchasers
12 to pay it?

13 A. They would pay either with a check or with a
14 credit card for the deliveries that they received.

15 Q. And the check was made payable to whom?

16 A. AAA.

17 Q. And what about cash, did AAA get any payments in
18 cash from any of its customers?

19 A. There may have been some payments in cash, yes.

20 Q. Those payments in cash would be paid to the truck
21 driver directly, is that how it works?

22 A. Yes.

23 Q. And the truck driver --

24 A. Would bring it to the office.

25 Q. Bring it to you.

82kyresc

16

Festinger - direct

1 City Fuel -- I'm sorry.

2 What kind of expenses did AAA Discount have
3 during the period of time we are talking about?

4 A. Those expenses would be either in advertising,
5 possibly postage and expenses relating to the sales of fuel.

6 Q. And if somebody was purchasing fuel from AAA
7 Discount, would it end up being delivered in a T.T. truck?

8 A. At times T.T., at times it would be through
9 transporter.

10 Q. At times it would be through?

11 A. A transporter.

12 Q. Would you explain how that is?

13 A. That is a common carrier that would deliver fuel
14 on behalf of AAA or City Fuel.

15 Q. You basically call up another company?

16 A. Correct.

17 Q. And say would you please deliver so many gallons
18 to such and such a location?

19 A. Correct.

20 Q. City Fuel during the period of time in question,
21 what was it's income?

22 A. Somewhere around \$1 million 400 or \$1 million
23 500.

24 Q. And it's expenditures, it's expenses during that
25 period of time?

Festinger - direct

1 A. Somewhere at \$1 million 300 or \$1 million 200.
2 Well, that's for fuel only. There are other items there
3 under the expense sheet.

4 Q. What other types, in addition to the fuel, what
5 other types?

6 A. General overhead, possibly also other advertising
7 expenses, labor -- well, outside labor, transportation that
8 may have been paid to other transporters, again, vehicle
9 repair, if any.

10 Q. And would City Fuel deliver fuel to customers in
11 T.T. trucks?

12 A. Yes, they could, yes.

13 Q. Is that the principal manner in which City Fuel
14 delivered fuel?

15 A. No. Outside transporters as well.

16 Q. And customers would be told to pay for their fuel
17 in what manner?

18 A. Check, cash, credit card.

19 Q. And of the revenues that City Fuel is generating,
20 the approximately \$1.4, \$1.5 million, that is all from the
21 retail sale of fuel to customers?

22 A. It may -- other items there could have been
23 repair to their furnaces, repair to tanks, cleaning of
24 tanks, repair to other peoples' trucks or cars would have
25 all been compiled inside the City Fuel.

02471850

18

Festinger - direct

1 Q. Of that \$1.4, \$1.5 million in revenues,
2 approximately how much of that was received in cash?

3 A. I'd estimate about ten or 15 percent possibly.

4 Q. Let me ask about General Oil Industries.

5 During the period of time, what income, if any,
6 did General Oil Industries have?

7 A. None that I can remember offhand without looking
8 at the records.

9 Q. And expenditures, expenses during that period of
10 time?

11 A. Likewise, I just don't remember them. There were
12 expenditures. Whether they were for equipment repair or
13 attorneys fees and legal fees, accounting fees, those would
14 also have been in City Fuel.

15 Q. Drawing on your recollection rather than the
16 records, could you tell us the approximate amount of
17 expenses that were charged to General Oil during this period
18 of time?

19 A. I don't remember.

20 Q. Are we talking about \$10,000, \$50,000? Can you
21 give us a ballpark?

22 A. I imagine somewhere around 10,000 if there was a
23 number.

24 Q. And T.T. Distribution during this period of time,
25 what income did it have?

82kyfesc

19

Festinger - direct

1 A. T.T. doesn't really have an income other than
2 transfers from the City Fuel main account or the General Oil
3 account, possibly customers' receipts may have gone in there
4 to T.T. Sometimes there may have been some transportation
5 work to outsiders, but if there was anything, it was
6 minuscule.

7 THE COURT: Wait a minute. T.T. Distribution is
8 the company that has the five fuel trucks, isn't it?

9 THE WITNESS: Correct.

10 THE COURT: What happens with the fuel trucks?
11 Are they leased to somebody? Don't the fuel trucks generate
12 any income?

13 THE WITNESS: We didn't do that type of
14 transaction for it, allocate a specific amount, it was all
15 under, considered under my ownership.

16 THE COURT: I don't understand you,
17 Mr. Festinger.

18 If the company owns five fuel trucks free and
19 clear, or at least has five fuel trucks that are owned free
20 and clear by something called Carl Transport, because Carl
21 Transport owns the trucks, right?

22 THE WITNESS: Yes.

23 THE COURT: Does T&T pay Carl Transport for the
24 trucks?

25 THE WITNESS: No.

02KYLESC
Festinger - direct

1 THE COURT: What?

2 THE WITNESS: No, sir.

3 THE COURT: What does T&T do with the trucks?

4 You got five fuel trucks. Well, are they left
5 there parked 365 days a year? What happens to the trucks?
6 What do you have the trucks for?

7 THE WITNESS: They are used to perform the
8 deliveries for T.T.

9 THE COURT: For who?

10 THE WITNESS: For the City Fuel, for the other
11 companies, City Fuel, AAA Discount.

12 THE COURT: But you said that AAA discount had no
13 significant income.

14 If AAA Discount delivers fuel, doesn't it
15 generate income?

16 THE WITNESS: Yes, it does. Yes, sir.

17 THE COURT: What did you mean when you said AAA
18 Discount had no significant income?

19 THE WITNESS: Well, your Honor, I look at
20 AAA/City Fuel as one company, too, even though they may have
21 been separated by name, it's all under one roof.

22 THE COURT: Go ahead.

23 BY MR. McENANY:

24 Q. Mr. Festinger, let me ask you this question:

25 Can you explain to us what, if any, business

Festinger - direct

1 purpose you have or you had in mind when you set up these
2 different corporations plus the Carl Transport entity to
3 perform these different functions and have these different
4 bank accounts?

5 A. One function of the various companies is sales
6 tactic, to have different names so that when customers are
7 shopping they do have a different name. People have --

8 THE COURT: Look, Mr. Festinger, I don't mean to
9 be impolite to you. He wants to know why you have five
10 different companies. They are all in the fuel oil business,
11 right?

12 THE WITNESS: Yes, sir.

13 THE COURT: Now, why don't you just have one
14 company? Why do you have five? What is the reason that you
15 have five?

16 THE WITNESS: When someone is shopping for fuel,
17 they may like the name City Fuel versus --

18 THE COURT: They may what?

19 THE WITNESS: Like, prefer the name City Fuel
20 versus the name AAA Discount Fuel. It may give them a sense
21 of security, it's a city company or something like that.
22 It's a sales tactic.

23 The purpose of having trucks under a different
24 name is primarily so that in those situations where we do
25 have creditors that we owe funds to, they won't necessarily

Festinger - direct

1 know that this is the Dell equipment or something like that.

2 THE COURT: And the only company you draw a
3 salary from is T&T Distribution?

4 THE WITNESS: Yes, sir. That's the payroll
5 company.

6 THE COURT: Did you file a personal income tax
7 return in 1997 for the year 1996?

8 THE WITNESS: Yes, sir.

9 THE COURT: What was your gross income?

10 THE WITNESS: At \$28,500, or thereabouts.

11 THE COURT: Go ahead.

12 BY MR. McENANY:

13 Q. Mr. Festinger, I would like now to have you tell
14 me during this period of time what bank accounts any of the
15 companies that you have and yourself had at any bank.

16 A. General Oil, General Fuel Oil, AAA Discount, H&M
17 Utilities, T.T.T. Distribution, City Fuel.

18 THE COURT: They all had bank accounts?

19 THE WITNESS: Yes, sir. They had during that
20 period at some point.

21 THE COURT: Do they all have bank accounts now?

22 THE WITNESS: No. H&M does not have a bank
23 account, General Oil does not have a bank account now.

24 THE COURT: But AAA does?

25 THE WITNESS: Yes, sir.

82kyfesc

23

Festinger - direct

1 THE COURT: T.T.T. does?

2 THE WITNESS: Yes, sir.

3 THE COURT: And City Fuel does?

4 THE WITNESS: Yes, sir.

5 THE COURT: Where are the bank accounts for AAA?

6 THE WITNESS: At Republic National Bank.

7 THE COURT: More than one account there for AAA
8 or just one account?

9 THE WITNESS: Just one accountant.

10 THE COURT: How about T.T.T., where does it have
11 its account?

12 THE WITNESS: Chemical Bank.

13 THE COURT: There is no more Chemical Bank.

14 THE WITNESS: Chase, I guess.

15 THE COURT: What branch of Chase?

16 THE WITNESS: It's on Van Brunt Street in Red
17 Hook.

18 THE COURT: What branch of Republic does AAA have
19 its bank account?

20 THE WITNESS: On Kings Highway, corner of 16th
21 Street.

22 THE COURT: How about City Fuel, where does it
23 have its bank account?

24 THE WITNESS: Also at Republic National Bank.

25 THE COURT: Same building?

0241150

24

Festinger - direct

1 THE WITNESS: Same building, yes.

2 THE COURT: How much is in the AAA account now?

3 THE WITNESS: Somewhere in the vicinity of

4 \$10,000.

5 THE COURT: How much is in the Chase account of

6 T.T.T.?

7 THE WITNESS: The a thousand or \$2,000.

8 THE COURT: How much is in the City Fuel account?

9 THE WITNESS: Possibly \$100.

10 THE COURT: Do you yourself have a bank account?

11 THE WITNESS: No, sir.

12 THE COURT: None at all, no savings account?

13 THE WITNESS: No, sir.

14 THE COURT: No checking account?

15 THE WITNESS: No, sir.

16 THE COURT: How do you pay your bills, your
17 personal bills?

18 THE WITNESS: I use the company bank account as
19 my own personal account, practically. I pay my bills
20 through the company.

21 THE COURT: Where do you live now?

22 THE WITNESS: At 1498 East 9th Street in
23 Brooklyn.

24 THE COURT: Is that a private home?

25 THE WITNESS: It's a two-family home.

82kyfesc

25

Festinger - direct

1 THE COURT: Do you own the house?

2 THE WITNESS: No, sir.

3 THE COURT: Who owns it?

4 THE WITNESS: Mr. Habib Tawil.

5 THE COURT: Are you related to him?

6 THE WITNESS: Not at all, sir.

7 THE COURT: Do you pay him rent?

8 THE WITNESS: Yes, I do.

9 THE COURT: How much rent do you pay him?

10 THE WITNESS: 950 a month.

11 THE COURT: Do you pay by cash or check?

12 THE WITNESS: By check.

13 THE COURT: Who is the check drawn on?

14 THE WITNESS: AAA Discount Fuel in most cases.

15 BY MR. McENANY:

16 Q. You indicated that you took a salary from T.T.
17 Distribution, Inc. Do I have that correct?

18 A. Yes.

19 Q. Did you take a salary from any of these other
20 companies?

21 A. As a payroll check, no, but as advances on either
22 loans or such items, yes.

23 Q. Going down these companies, again, during the
24 period 1997 to date, from H&M Utilities, approximately how
25 much money did you take out for yourself from H&M Utilities,

Festinger - direct

1 if anything?

2 A. I couldn't pinpoint specifically H&M, but I could
3 say as a combination of all the accounts the amount would be
4 somewhere at \$6,000.

5 THE COURT: You took out \$6,000?

6 THE WITNESS: Yes, sir.

7 THE COURT: In what period of time?

8 THE WITNESS: In a twelve month period.

9 THE COURT: Go ahead.

10 BY MR. McENANY:

11 Q. When you say you took that out, you took that out
12 in what form?

13 A. Checks.

14 Q. Checks payable to whom?

15 A. Either the grocery, to the meat store, to the
16 rent. Any, any need that I had I would write the check.

17 Q. If a customer paid by credit card, how would that
18 money eventually end up in one of the bank accounts or where
19 would the money go if the customer paid by credit card?

20 A. To AAA Discount Fuel account.

21 Q. The AAA Discount Fuel account where?

22 A. At Republic National Bank.

23 Q. And checks, would all checks be deposited into
24 one of the accounts that you are referring to?

25 A. Yes.

82kyfesc

27

Festinger - direct

1 Q. When was the H&M account closed?

2 Is that closed?

3 A. Yes, it was.

4 Q. When?

5 A. I don't remember when. I'm sorry.

6 Q. And the General Fuel Oil account, did you also

7 close that?

8 A. Yes, I did.

9 Q. When a customer paid by cash, how would that cash
10 be accounted for?

11 A. It would be deposited into either AAA, General
12 Oil, T.T.

13 Q. And to what extent did you take cash out for your
14 own purposes before depositing into the bank in the first
15 place?

16 A. If there was, it would be somewhere in the
17 vicinity of five to eight thousand dollars, which is what is
18 reported on my tax return. But otherwise, it was all
19 deposited, and primarily deposited.

20 Q. So you took approximately five to eight thousand
21 dollars in cash out of the cash flow for yourself plus about
22 \$6,000 in checks for personal purposes during this period of
23 time?

24 A. Correct.

25 Q. Plus the salary checks which you were referring

ozkylESC

28

Festinger - direct

1 to?

2 A. Correct.

3 Q. And that all adds up to approximately \$28,500?

4 A. No, that's a total of about \$34,800.

5 Q. Okay. And you declared \$28,500. Where is the
6 difference between the 34,000 and the 28,500? What accounts
7 for that?

8 A. The 20,800 were the actual payroll checks to me.
9 About \$6,000 was accounted for on the balance
10 sheet that we submitted to the Probation Department where it
11 shows that a reduction in loans were given to me as a result
12 of the \$6,000 that I took, and \$8,000 was reported on the
13 income tax return.

14 Q. I'm confused.

15 The reductions in loans that you are referring to
16 were paid by check?

17 A. Yes.

18 Q. That's \$6,000?

19 A. Correct.

20 Q. Unless I misunderstood you, I thought you said
21 before you took approximately 5,000 to 8,000 out in cash
22 proceeds before even depositing anything in the bank.

23 A. Correct. That's on the income tax return, too.

24 Q. So just adding those up, we would get to about
25 \$39,000 to \$42,000. Is that --

02ky1esc

29

Festinger - direct

1 A. No.

2 The income tax return has one line where you have
3 \$20,800 as my payroll.

4 There is a separate line for \$8,000 in other
5 income, and the financial statements for the company show
6 the other six.

7 Q. I think I saw my mistake. I had thought it was
8 \$28,000 instead of \$20,000.

9 Let me move on.

10 For each of the accounts that are active, does
11 the bank return to you cancelled checks that you have
12 written on the account?

13 A. Either to 156 Sullivan Street or to 4416 18th
14 Avenue -- you are asking about the mail addressing?

15 Q. No. You get cancelled checks with your monthly
16 statement, is that correct?

17 A. Yes.

18 Q. And what about deposit tickets?

19 A. We get -- an initial deposit ticket is given upon
20 the deposit itself.

21 Q. And where do you maintain these?

22 A. In the office at 156 Sullivan Street.

23 Q. Do you have any personal or family obligations to
24 anybody; alimony, child care, anything of that nature?

25 THE COURT: You are married, right?

82kyiesc

Festinger - direct

1 THE WITNESS: Yes, sir.

2 Technically, I'm married, yes.

3 THE COURT: All right. Do you pay alimony to

4 anybody?

5 THE WITNESS: To my ex-wife.

6 THE COURT: How much alimony?

7 THE WITNESS: In recent years, in the past year,

8 year and a half, I haven't given her anything more than

9 about \$500, maybe \$700.

10 THE COURT: Do you have children?

11 THE WITNESS: Yes, I do.

12 THE COURT: How many?

13 THE WITNESS: Four.

14 THE COURT: How old are they?

15 THE WITNESS: The youngest is nine, the next one

16 is 12-and-a-half and the next one is 17 and the oldest is

17 19.

18 THE COURT: Do you pay child support for the

19 children?

20 THE WITNESS: I pay a form of child support, yes.

21 THE COURT: How much totally do you pay in child

22 support per month?

23 THE WITNESS: It varies on their needs. I don't

24 do it as a specific amount monthly.

25 THE COURT: Is there a court order requiring you

Festinger - direct

1 to pay child support?

2 THE WITNESS: No, sir, there is no court order,
3 it was an agreement made between Mrs. Festinger and myself.

4 THE COURT: Your ex-wife and yourself?

5 THE WITNESS: Yes.

6 THE COURT: When you say there is no specific
7 amount per month, when was the last time you paid child
8 support?

9 THE WITNESS: What I do is I basically buy their
10 clothes or pay -- I'm obligated to pay their, their school
11 tuition or day camp.

12 THE COURT: When was the last time you paid any
13 child support?

14 THE WITNESS: In the past two weeks I've paid out
15 about \$350 in child support.

16 Q. Over the course of 1997, how much total of what
17 we are referring to as child support did you pay out?

18 A. Approximately six to -- \$600 to a thousand
19 dollars a month, depending on the situation.

20 Q. There are some cancelled checks in the materials
21 that we received a while ago payable to Touro College or
22 Touro Law School. Can you tell us what those relate to?

23 A. That's my older daughter, 19 years old. She went
24 to Touro College and I paid for her tuition.

25 Q. Is she still going there?

82kyresc

32

Festinger - direct

1 A. No, not currently.

2 Q. What is the total tuition that you --

3 A. It was about two or three thousand dollars for a
4 semester. I don't recall the exact number.

5 Q. And for 1998, what do you estimate these child
6 support obligations will amount to?

7 A. I'm supposed to be paying \$300 a week for child
8 support as child support goes. But since I pay it for their
9 needs, their clothing and so on, I would estimate it could
10 still be about I guess a thousand dollars for the month or
11 \$1,200 a month.

12 Q. And you pay for that by check drawn on one or
13 another of these bank accounts?

14 A. Correct.

15 Q. In addition to these child support obligations,
16 what are your other personal expenses?

17 A. My apartment for \$950 a month; my telephone bill
18 varies, somewhere around \$70 or \$80 a month; electricity
19 somewhere around \$60 or \$70 a month; gas about \$40 or 50.

20 I've got food expenses on a weekly basis. I
21 estimate that I spend about \$150 or \$200 a week on both food
22 and cleaning needs, like shirts and suits and dry cleaning,
23 laundry.

24 Q. Do you live with your wife at that address, is
25 that correct?

Festinger - direct

1 A. No. I live with my children when they are over.

2 THE COURT: I didn't hear --

3 Q. I'm sorry?

4 A. Only with my children when they are over. I live
5 by myself.

6 Q. Are you separated from your wife at the present
7 time?

8 A. Yes. We have a Jewish divorce, that's a Get
9 otherwise known as.

10 Q. And do you have any financial obligations toward
11 her?

12 A. Not at this time, no.

13 THE COURT: Off the record.

14 (Discussion off the record)

15 THE COURT: You indicated you are going to ask
16 about the financial statement, that is Exhibit A to the
17 letter of February 12?

18 MR. McENANY: Yes, that's correct, your Honor.

19 I marked the letter itself Government Exhibit 1.

20 THE COURT: All right.

21 MR. McENANY: Then I just wanted to give a copy
22 to the witness.

23 (Handing to the witness)

24 (Pause)

25 BY MR. McENANY:

Festinger - direct

1 Q. Mr. Festinger, you got that in front of you,
2 right?

3 A. Yes, sir.

4 Q. Upper left-hand corner, the second or third line
5 says, "Related company cash analysis."

6 A. Yes, sir.

7 Q. What are the related companies that are covered
8 in this?

9 A. H&M Utilities, General Oil, AAA Discount Fuel,
10 City Fuel, T.T.T. Distribution.

11 Q. Just the five we previously discussed, is that
12 correct?

13 A. Yes.

14 Q. There is an item there, "Prepaid rent, \$45,000."

15 A. Yes, sir.

16 Q. What does that refer to?

17 A. A few years back we prepaid for a lease, a
18 long-term lease that ended, that is ending at the end of
19 1989.

20 Q. 1989?

21 A. 1998, and that is the prepaid rent.

22 Q. And that is for what property?

23 A. That's the 156 Sullivan Street area, building.

24 Q. So you have paid for rent up to the end of this
25 year on that piece of property, is that correct?

Festinger - direct

1 A. Correct.

2 Q. Are you going to continue to stay at that
3 location or what --

4 A. If we survive, yes.

5 Q. The next block refers to an item called payroll
6 clearing.

7 What does that refer to?

8 Just let me point out --

9 A. Yes, I see the line. I'm trying to -- I, I
10 imagine, I don't know because I'm not that on top of this
11 item, but I would imagine that this is referring to payroll
12 that is to be paid, that is due at the end of this period.

13 In other words, if this was done till July 31,
14 well, then, on July 31 this amount of payroll may have been
15 due to employees.

16 Q. Do you have a payroll service that covers your
17 payments to employees?

18 A. Yes.

19 Q. What is the name of the payroll service?

20 A. Brandts Payroll Service.

21 Q. Where are they located?

22 A. They are in Greenpoint or that area.

23 Q. I want to move down the page near the middle and
24 the reduction in liabilities area.

25 There is a loan payable, Samuel Festinger,

02KYLESC

36

Festinger - direct

1 \$5,900?

2 A. Correct.

3 Q. Is that the extent of any loans that any of these
4 companies owe to you at this point?

5 A. No. This is the amount that was reduced from the
6 income that was generated during this period.

7 The actual loan is on a different page. Shall I
8 point the page out?

9 Q. No. We will get to it.

10 A. Okay.

11 Q. Let me ask you, does that refer to the amount of
12 money that was paid to you, then?

13 A. Yes.

14 Q. And just going down there, loan payable, Regional
15 Petroleum, you paid \$988 to them?

16 A. Correct.

17 Q. What is BA Fuel?

18 A. That's Big Apple Fuel in the amount of \$23,000
19 that was due on fuel.

20 Q. And what is Big Apple Fuel?

21 A. It's a fuel company.

22 Q. A wholesale fuel supplier?

23 A. No, also retail, but --

24 THE COURT: Who owns it, Big Apple?

25 THE WITNESS: Big Apple, owned by Richard

Festinger - direct

1 Eldridge.

2 THE COURT: Do you have an interest in Big Apple
3 Fuel?

4 THE WITNESS: None at all, sir.

5 THE COURT: Well, this entry, loan payable BA
6 Fuel, \$23,111.02, is that a loan that you made to BA Fuel or
7 is it a loan from BA Fuel to you? Who loaned who the money?

8 THE WITNESS: It was debt due to Big Apple Fuel
9 and was repaid during this period.

10 THE COURT: So in other words, you had taken a
11 loan from Big Apple Fuel?

12 THE WITNESS: No. It really is for amounts that
13 were not paid and were listed as loans, but really is debt
14 due.

15 THE COURT: I don't understand.

16 Who owed Big Apple Fuel \$23,111.02?

17 THE WITNESS: All the related companies.
18 Specifically, probably it was City Fuel.

19 THE COURT: Had they borrowed money from Big
20 Apple Fuel?

21 THE WITNESS: In the form of petroleum.

22 THE COURT: In the form of what?

23 THE WITNESS: Petroleum, oil.

24 THE COURT: In other words, they purchased
25 petroleum oil from Big Apple Fuel?

Festinger - direct

1 THE WITNESS: Corrects.

2 THE COURT: And had an account in which at July
3 31, 1997 they owed \$23,111.02 to Big Apple Fuel? Is that
4 what you are saying?

5 THE WITNESS: No. That was the amount paid
6 during the period. I think the amount is greater. Owed to
7 Big Apple Fuel is a total, was a total of about \$40,000, if
8 I'm not mistaken, and this is the amount which was paid
9 down.

10 THE COURT: Okay. Go ahead.

11 BY MR. McENANY:

12 Q. Turning to the next page where you say assets,
13 you have a loan receivable BQE Transportation. What is BQE
14 Transportation?

15 A. BQE Transportation was the -- was my company that
16 owned the equipment and the related companies owed BQE --
17 BQE, actually, they owed BQE -- I'm sorry.

18 BQE owed City Fuel and its related companies
19 \$27,000.

20 Q. And this is a company of yours?

21 A. Yes.

22 Q. Is this company in continued operation at all?

23 A. No, sir, it is not.

24 Q. So this is really not an asset at all, correct?

25 A. Correct.

Festinger - direct

1 Q. What is K Enterprises?

2 A. That's also one of the companies I owned in the
3 past and that was a debt due by K Enterprises to City Fuel
4 and related companies.

5 Q. What is Basic Realty?

6 A. Basic Realty is a company owned by one of the
7 fuel terminals we purchased fuel from, an advance, \$40,000,
8 to that name, to that company so that we would have a credit
9 line.

10 Q. You advanced \$40,000 to them and you never got it
11 back?

12 A. We are using that as a source of supplying fuels
13 currently to.

14 THE COURT: You are using that as a base of
15 supplying fuel to them?

16 THE WITNESS: No. They supply fuel to us.

17 THE COURT: They supply fuel to you?

18 THE WITNESS: Correct.

19 THE COURT: And as they supply fuel to you, does
20 that reduce the debt that they have to you?

21 THE WITNESS: If I wouldn't be paying my current
22 bills, it would, but I keep up as much as I can as best I
23 can.

24 Q. But they are requiring you to maintain a running
25 deposit of approximately \$40,000 in order to continue to

Festinger - direct

1 supply fuel to you?

2 A. Correct.

3 Q. And who owns Basic Realty?

4 A. I don't even know. I have no idea. It's a part
5 of the 24 hour fuel system.

6 Q. Do you have any ownership interest in or
7 beneficial interest in or any connection with Basic Realty
8 other than purchasing fuel from them and maintaining this
9 money on deposit?

10 A. None whatsoever.

11 Q. And why do you need to keep \$40,000 on deposit to
12 purchase fuel? That seems quite high.

13 A. In essence, in the wintertime when volume is, is
14 quick and the gallons go quickly, 40,000 isn't even high
15 enough and we don't really have a credit line.

16 Q. In the wintertime how much fuel in a month would
17 you purchase from Basic Realty?

18 A. Fuel consumption during the winter, during
19 January month, should be somewhere around 20 percent of the
20 annual gallons. If our annual gallons would be
21 two-and-a-half million gallons for that period, that means
22 approximately \$400,000 worth, so we would have to really pay
23 quickly in order to maintain our credit line.

24 Q. And what is Koch Oil Trading? It's the one right
25 underneath Basic Realty.

82kyfesc

41

Festinger - direct

1 A. That's, Koch Oil Trading was a wholesale company
2 I, I was attempting to begin. It's my company and it's
3 basically monies that are owed to City Fuel and related
4 companies from Koch.

5 Q. In essence, that money will never be collected?

6 A. Correct.

7 Q. Let me go down to liabilities.

8 There is a notation due to Brandts.

9 What does that refer to?

10 A. That is an amount due to Brandts Payroll Service
11 probably for either the work that they did or for as a
12 payroll service.

13 Q. Right underneath that, loan payable officer.

14 What does that refer to?

15 A. That's an amount that I had invested in my
16 company and to City Fuel and related companies with a total
17 of \$88,000, and that is due to me from the companies.

18 Q. And when did you make that investment?

19 A. Throughout the periods. I don't have a specific
20 date. It could have been at any time that I had money and I
21 put it in.

22 THE COURT: Mr. Festinger, let's go back to due
23 to Brandts for a minute.

24 THE WITNESS: Yes, sir.

25 THE COURT: So you are saying that your related

82kyresc

42

Festinger - direct

1 companies owe Brandts \$1,685.80 as of July 31, 1997, is that
2 right?

3 THE WITNESS: Correct.

4 THE COURT: Turn back now to the page before, the
5 first page.

6 You told Mr. McEnany that the entry in the
7 increase in liabilities section where it reads "due to
8 payroll service" was to Brandts; correct?

9 THE WITNESS: Yes, sir.

10 THE COURT: And that amount there is \$3,232.12.

11 THE WITNESS: Yes, sir.

12 THE COURT: Now, what back on July 31 of 1997 was
13 owed to Brandts? Was it the total of the \$3,232 and the
14 \$1,685, or was it the difference between those figures or
15 was it one of those two figures?

16 I don't understand what the two figures mean.

17 THE WITNESS: I believe that the due to payroll
18 service is a form of -- one second. Let me digest. I don't
19 want to speak without -- (Pause)

20 I didn't -- I'm not an accountant so I'm not sure
21 of the concept, but I believe -- I shouldn't say I'm not an
22 accountant, but I'm not the accountant that did this.

23 Due to payroll service in this case probably
24 means paid already, because the total here is total cash
25 provided, therefore, either it was paid or they had it on

Festinger - direct

1 deposit towards payroll, and in the statement in the balance
2 sheet where liabilities goes it means what is still due.

3 THE COURT: Okay.

4 The loan payable officer account on the liability
5 section of the balance sheet, who is that payable to?

6 THE WITNESS: Me.

7 THE COURT: That is payable to you?

8 THE WITNESS: Yes, \$88,000, right.

9 THE COURT: So that is a personal asset of yours,
10 but a liability of the companies?

11 THE WITNESS: Correct.

12 THE COURT: And the loan payable to Regional
13 Petro, what is Regional Petro?

14 THE WITNESS: Regional Petroleum was also one of
15 my prior companies and it is a loan that is due or payable
16 to them. It's of money owed to Regional Petroleum.

17 BY MR. MCENANY:

18 Q. Regional Petroleum is now no longer active in
19 business, correct?

20 A. Correct.

21 Q. What is loan payable to Petrolite?

22 A. It is also loan due Petrolite, but the company is
23 no longer alive.

24 Q. Petrolite is one of your companies?

25 A. Yes, sir.

Festinger - direct

1 THE COURT: Well, is Petrolite an active company?

2 THE WITNESS: No, sir.

3 THE COURT: And are you the president of
4 Petrolite?

5 THE WITNESS: Yes, I was.

6 THE COURT: You were?

7 THE WITNESS: Yes.

8 THE COURT: Has Petrolite been dissolved?

9 THE WITNESS: Yes.

10 THE COURT: If it is dissolved, why do you owe it
11 or why do the related company owe it \$319,000, if it's no
12 longer in existence, it has been dissolved? Why is that a
13 liability of your present related companies?

14 THE WITNESS: We simply never wrote it off yet.
15 To write it off may show a tremendous amount of writeoffs or
16 a gain which isn't real.

17 BY MR. McENANY:

18 Q. Going down, loan payable Citywide Fuel, what is
19 Citywide Fuel?

20 A. That was a transportation company that sold us
21 some of the equipment that we have currently.

22 Q. On the last page, these are your personal
23 liabilities, is that correct, as of that date?

24 A. Yes, sir.

25 Q. Do you have any additional personal liabilities

82kyresc

45

Festinger - direct

1 as of the present that do not appear here?

2 A. Yes, sir. The tuition for my children and the
3 alimony and child support are not listed here.

4 Q. Looking at these dollar figures, has the amount
5 that you owe on the Advanta National Credit Card changed in
6 any substantial amount from the amount shown here?

7 A. No, sir.

8 Q. What about American Express?

9 A. No change.

10 Q. You still owe them \$30,000, approximately?

11 A. Yes.

12 Q. What about the Chase credit card?

13 A. Yes. It's still owed.

14 Q. Citibank?

15 A. Still owed.

16 Q. Both Citibank ones?

17 A. Yes. Still owed.

18 Q. Bank of America, also?

19 A. Still owed.

20 Q. Is that a credit card?

21 A. Yes, sir.

22 Q. What is Sequa Financial?

23 A. That was a finance company that financed the
24 trucks that we had in the past and they were repossessed.

25 Q. And you still owe them \$230,000, is that correct?

Festinger - direct

46

1 A. Yes.

2 Q. And Federal Financial, that is the matter
3 relating to I guess Mr. Berkritsky, the attorney here in
4 court, the trucks?

5 A. Yes.

6 Q. Chase business loan, what is that?

7 A. That was a revolving credit line we had back in
8 1990 or 91, somewhere in that range, and that was an amount
9 unpaid at that point.

10 THE COURT: When you say "we had," what --

11 THE WITNESS: I really mean me and my companies,
12 City Fuel.

13 THE COURT: This page that Mr. McEnany is asking
14 you questions about now lists your personal liabilities.

15 Do you personally owe Chase \$250,000?

16 THE WITNESS: Yes, sir. It was a personal
17 signature that guaranteed the loan.

18 THE COURT: I see. So in other words, you are
19 the guarantor for your companies?

20 THE WITNESS: Yes, sir.

21 BY MR. MCENANY:

22 Q. Has Sequa Financial taken any action to recover
23 this \$230,000?

24 A. No, sir.

25 THE COURT: How about Chase?

02KYLESC

47

Festinger - direct

1 THE WITNESS: No, sir.

2 THE COURT: And the gentleman here in court, he
3 is from Sequa?

4 MR. McENANY: Federal Financial.

5 THE COURT: Federal Financial.

6 And you took a personal loan from Federal
7 Financial or did the companies take a loan and you
8 guaranteed the loan?

9 THE WITNESS: The companies took the loan and I
10 guaranteed it.

11 THE COURT: And when did you take the loan from
12 Manufacturers Hanover Trust for the truck?

13 THE WITNESS: Sometime in 1989, possibly 1990.

14 THE COURT: Have they made any efforts to
15 collect?

16 THE WITNESS: No, sir.

17 THE COURT: How about Chase, when did you take
18 that loan from Chase, to which company you owe a quarter of
19 a million dollars as the guarantor?

20 THE WITNESS: That was in 1990 or 1991.

21 THE COURT: Has Chase taken any action at all to
22 collect on the loan?

23 THE WITNESS: Only back then in 1992, 1993.
24 Currently all they have is judgments against me.

25 THE COURT: That's reduced to a judgment?

Festinger - direct

1 THE WITNESS: All of these are judgments.

2 THE COURT: Oh, they are all judgments? The
3 Advanta, the American Express, the Chase credit card, the
4 Citibank credit card, the two Citibank credit cards, those
5 are all judgments?

6 THE WITNESS: I believe they are. I haven't
7 looked at where you look for judgments, but I know they are
8 in my financial -- my TRWs.

9 THE COURT: They are in your what?

10 THE WITNESS: TRW, you know, the credit reports
11 as due and owing. I don't know what they did with them.

12 THE COURT: And does Sequa have a judgment
13 against you for \$230,000?

14 THE WITNESS: Yes, sir.

15 THE COURT: And does Federal Financial have a
16 judgment against you for \$220,000?

17 THE WITNESS: I believe so.

18 THE COURT: And does Chase have a judgment
19 against you for \$250,000?

20 THE WITNESS: Yes, sir.

21 THE COURT: And does Manufacturers Hanover Trust
22 have a judgment against you for \$13,500 on this loan for the
23 truck?

24 THE WITNESS: Yes, sir.

25 THE COURT: And in connection with this case, you

Festinger - direct

1 owe Manufacturers Hanover \$160,000?

2 THE WITNESS: We have done the recalculation. I
3 believe the number is \$185,000.

4 THE COURT: Okay.

5 THE WITNESS: Yes.

6 MR. McENANY: Your Honor, let me just have a
7 moment with Mr. Blackford.

8 (Pause)

9 Your Honor, I think I have covered as much
10 general territory as makes sense to do it in a setting like
11 this.

12 THE COURT: Is there anything else that the
13 Probation Department suggests, Mr. McEnany, that you want to
14 have elicited in order to know his financial condition?
15 Anything else that you think you want to learn?

16 MR. BLACKFORD: I don't think so, your Honor.

17 MS. CONYERS: No.

18 THE COURT: All right. Mr. Ross.

19 CROSS-EXAMINATION

20 BY MR. ROSS:

21 Q. Mr. Festinger, are there markets and seasonal
22 markets that affect the factors in your delivering oil?

23 A. Yes, there are.

24 Q. Describe them briefly for us?

25 A. I will start with the current. Right now we are

Festinger - cross

1 experiencing one of the slowly of the winters --

2 THE COURT: I'm sorry?

3 THE WITNESS: One of the slowest and warmest
4 winters in many years.

5 A. A year like this year, there is no oil company,
6 healthy or otherwise, that would benefit much, and certainly
7 a weak company would be at a disadvantage.

8 Other factors are the competition that's out
9 there in the fuel industry is able to deal with their
10 delivery systems in a way which I cannot.

11 Obviously, I am running as clean an operation as
12 I can and other companies can compete in unethical manners,
13 so when it comes to getting a bid from the government or
14 setting some type of major contract, you cannot come close
15 to their prices.

16 Even terminals who sell fuel at a wholesale price
17 don't bid on some of these contracts because there is no way
18 they can supply the fuel even at a wholesale cost for the
19 same price those other companies are delivering the fuel to.

20 Now, that's number two item.

21 Number three, the real estate people and
22 homeowners have basically two large expenditures:

23 The first is their mortgage to the bank which
24 they can't get out of, but their second expenditure, which
25 is usually their heating bill, they cannot pay and benefit

Festinger - cross

51

1 substantially. So many people don't necessarily pay their
2 bills.

3 We try very hard to maintain control, but it's
4 impossible. Back in 1990, when the real estate market fell
5 apart, is basically when I fell apart.

6 Q. Mr. Festinger, with respect to the time period
7 that Mr. McEnany was asking you about, that being 1997
8 calendar year and this part of 1998, going back to 1997, how
9 would you characterize that winter period just in terms of
10 the seasonal affect of weather and market demand on your
11 business?

12 A. The market demand has diminished substantially
13 during 1997 and down to today. In 1997 we experienced many
14 people converting to gas and loss of market share because of
15 the fierce competition.

16 Q. Thank you.

17 MR. ROSS: I have no further questions.

18 Thank you.

19 THE COURT: Okay.

20 I have one or two.

21 MR. McENANY: Your Honor, may I ask one specific
22 question?

23 THE COURT: Sure.

24 REDIRECT EXAMINATION

25 BY MR. McENANY:

1 Q. United Welfare Fund, some checks are made payable
2 to that. What is United Welfare Fund?

3 A. That's a union that we, City Fuel and related
4 companies, pay to have benefits for our employees. The
5 benefits would include medical coverage and union dues and
6 things like that.

7 Q. Are your employees members of the United --

8 A. Anyone, yes.

9 Q. What is the union that they are members of?

10 A. Its called the United Welfare Fund, Local 553, I
11 think.

12 MR. McENANY: Thank you, your Honor.

13 THE COURT: Okay.

14 Mr. Festinger, when did you last make any
15 restitution payment?

16 THE WITNESS: About six or seven months ago, I
17 believe, I made a ten or 16,000 payment to Chase,
18 chemical -- to Manufacturers for this case.

19 THE COURT: Could you read back the question and
20 the answer.

21 I want up to listen to the question and then your
22 answer.

23 (Record read)

24 THE COURT: To whom did you last make payment?
25 Was it to Chase?

Festinger - cross

1 THE WITNESS: I don't remember what the check
2 read. I believe it reads check Chase Manhattan Bank.

3 THE COURT: You say that was approximately six
4 months ago.

5 THE WITNESS: Correct.

6 THE COURT: Now, there was a payment due to Chase
7 on August 1 of \$16,618.37.

8 Was that ever paid?

9 THE WITNESS: I don't remember, sir. I know that
10 one of the scheduled payments sometime that year, perhaps
11 the one before that, I don't remember offhand.

12 THE COURT: August is the eighth month and we are
13 now in the second month so that would have been six months
14 ago or nearly seven now, and there was another payment due
15 to Chase of \$16,995.10 on November 1 of 1997.

16 Was that payment made?

17 THE WITNESS: No, sir.

18 THE COURT: And you don't know whether or not the
19 \$16,618.37 was paid?

20 THE WITNESS: No, sir.

21 THE COURT: Or you say it was not?

22 THE WITNESS: It probably was not. I just don't
23 remember what the last payment was.

24 MR. McENANY: Mr. Blackford advised me that he
25 thinks a payment, in fact, was made on August 1.

UNRECORDED

Festinger - cross

54

1 THE COURT: There was a payment, because I'm
2 addressing now the gentleman from the Probation Department,
3 the communication that I received from the Probation
4 Department dated November 13 of 1997, signed by
5 Mr. Blackford, indicates on page two of the letter to me,
6 "Efforts are being made to verify that Festinger made
7 scheduled restitution payments to Chase bank." Payments of
8 the amounts that I just stated were due August 1 and
9 November 1, 1997, respectively.

10 Mr. Festinger said he did not make the November 1
11 payment, he doesn't seem to think he made the August 1
12 payment, but the Probation Department things he made the
13 August payment.

14 MR. BLACKFORD: Your Honor, since that memo, in
15 fact, the latest, January 28 memo, does indicate that the
16 bogus first payment was made and I have been in frequent
17 contact with the bank.

18 THE COURT: I'm sorry. Let me read. There are
19 so many papers in this that I forget which one is the
20 operative paper.

21 Let me just reread the January 28 memorandum.

22 (Pause)

23 There was something you testified to just a few
24 moments ago, Mr. Festinger, that I'm not a hundred percent
25 clear about.

82kyfesc

55

Festinger - cross

1 Do the four children live with you some of the
2 time, none of the time or all of the time?

3 THE WITNESS: Only some of the time.

4 THE COURT: Some of the time. Okay. Thank you.

5 (Pause)

6 What happened to the charge relating to the
7 September 26, 1996 arrest, the state arrest?

8 THE WITNESS: That was adjourned in lieu of
9 dismissal, I think is the correct terminology.

10 THE COURT: Do you mean in contemplation of
11 dismissal?

12 THE WITNESS: Right.

13 THE COURT: And was that in Kings County Supreme
14 Court?

15 THE WITNESS: Yes, sir.

16 THE COURT: The Probation Department, and I'm
17 addressing you, Mr. Blackford, you say the matter is pending
18 in Kings County Supreme Court under docket number 96K070627.

19 Obviously, you checked records to learn that.

20 Is the matter adjourned in contemplation of
21 dismissal or is it pending, or what is its status?

22 MR. BLACKFORD: I'm sorry, your Honor, where are
23 you reading that from?

24 THE COURT: On page 2 of the last part of the
25 paragraph just above number 2.

1 MR. BLACKFORD: Yes. I believe when this what is
2 referred to now as the amended report was initially typed
3 up, at that time it was pending, but I believe conferring
4 with Mr. Conyers it has been dismissed in contemplation.

5 THE COURT: All right. So that charge
6 essentially is disposed of and finished. Okay.

7 Did you represent him on that, Mr. Ross?

8 MR. ROSS: Yes, sir. My office did.

9 THE COURT: And is it adjourned in contemplation
10 of dismissal?

11 MR. ROSS: Yes, it is.

12 THE COURT: In Supreme Court?

13 MR. ROSS: No. I think that is probably a
14 misprint, because the docket number here, the criminal court
15 docket number is pending in the criminal court.

16 THE COURT: That's what I thought and that's why
17 I was asking, because I never heard of an adjournment in
18 contemplation of dismissal in the Supreme Court.

19 MR. ROSS: No. It was never indicted. It was
20 pending in the miscellaneous part that you have unindicted
21 felonies and it was adjourned in contemplation of dismissal
22 without indictment.

23 THE COURT: Thank you.

24 (Pause)

25 Are there any additional documents that the

Festinger - cross

57

1 Probation Department wishes to receive from Mr. Festinger?

2 MR. BLACKFORD: No, your Honor.

3 THE COURT: Do you have everything related to his
4 finances that you want?

5 MR. CONYERS: At this time, your Honor, yes.

6 THE COURT: All right. Thank you.

7 And I take it, Mr. McEnany -- before I address
8 you, I take it, Mr. Ross, that you are contesting and that
9 he is pleading not guilty to the four pending specifications
10 relating to violations of probation, is that correct?

11 MR. ROSS: Well, we have discussed that, Judge,
12 and I think it is fairly clear that with respect to the
13 restitution payments, it's obvious that the payments haven't
14 been made. I think that is established. And we had
15 discussed how we would procedurally deal with this, whatever
16 your Honor wanted to do.

17 I initially requested another period of time to
18 try to sort out some additional restitution money if we are
19 going to call the question.

20 My understanding under the rule is that
21 Mr. Festinger is entitled to a revocation hearing which can
22 be waived, or in order to avoid a contested violation
23 proceeding I had talked to Mr. McEnany about Mr. Festinger
24 entering an admission that he had failed to make
25 restitution. Either of those procedural possibilities exist

Festinger - cross

58

1 to the court.

2 I would also say that it would be my argument to
3 the court that Mr. Festinger should not be either violated
4 or sent to jail because of his inability to make restitution
5 payments.

6 THE COURT: What about Specification 1?

7 MR. ROSS: Well, I suppose your Honor could make
8 a finding that that was a violation of probation.

9 Mr. Festinger, I believe, did inform the
10 Probation Department of the arrest, that that case was gone
11 over by the Kings County district attorney's office and the
12 judge in criminal court and they made a determination that
13 it wasn't something that was to be proceeded upon, and I
14 would urge the court not to violate Mr. Festinger on that
15 charge. We would certainly enter a not guilty plea to that
16 violation.

17 THE COURT: What is the government's position
18 concerning Specification 1 in view of the status of the case
19 in Brooklyn?

20 And it is conceivable, and I don't mean this in
21 any way critically but it is conceivable that you are not
22 familiar with the state procedure. An adjournment in
23 contemplation of dismissal is a recognition by the court
24 that if he doesn't do anything improper between the time of
25 the adjournment and whatever date is fixed, there is

Festinger - cross

59

1 generally a suspense date fixed, that the case is dismissed
2 with prejudice.

3 In other words, it is my experience, Mr. McEnany,
4 that no case that was ever adjourned in contemplation of
5 dismissal ever was prosecuted.

6 MR. McENANY: Yes. I'm somewhat familiar with
7 that.

8 THE COURT: Okay.

9 MR. McENANY: I'm not pushing that as a ground.

10 THE COURT: Okay. So Specification 1, I find
11 that there is no violation on.

12 What about Specifications 2, 3 and 4, what is the
13 government's position concerning those?

14 There is no question that the restitution was not
15 paid, but the question is, was there the ability to make any
16 restitution payment. That's really the question, isn't it?

17 MR. McENANY: Yes.

18 THE COURT: I mean, pulling this apart -- you can
19 leave the witness stand, Mr. Festinger, and go back and sit
20 with Mr. Ross.

21 MR. McENANY: As I stated last time, I guess my
22 principal concern was that Mr. Festinger hadn't made his
23 finances sufficiently clear to the Probation Department.

24 We have had this proceeding and I really can't, I
25 can't put my finger on any quantity of money that would seem

Festinger - cross

1 that I can say that should have been paid.

2 There may be some funds there, but the court now
3 has an idea of how difficult it is to figure out what's
4 going on, and not to mention, you know, it's probably a
5 business like every other business and --

6 THE COURT: One thing that he said near the end
7 of his time on the witness stand is something that I have
8 heard on the radio and seen on television and read in the
9 financial pages of the newspapers, which is, this is a
10 terrible year for fuel oil. There is no question about
11 that, because, as he said, it's the warmest winter in
12 history. So these five companies, if they ever made money,
13 this winter is one that they are not going to make very
14 much.

15 So the question really becomes, as far as I can
16 see, and if I'm wrong I don't mind being educated by either
17 you or Mr. Ross or the probation officers, I don't have any
18 false pride of office in that regard, I mean, the question
19 is whether or not under Specification 2 he could have made
20 the restitution payments; the question is whether or not
21 under Specification 3 he could have complied with the
22 September 8 -- well, as to Specification 4, rather, whether
23 he could have complied with it. And the question is really,
24 in view of the fact that we have had this hearing, I mean,
25 we know as best we can, I guess, what his financial

Festinger - cross

61

1 condition is.

2 What is the recommendation here of the government
3 as to what course I should pursue today?

4 MR. McENANY: Your Honor, I think, and I hate to
5 say this because of the burden it places on the Probation
6 Department, but Mr. Festinger, I think -- I don't think that
7 he could be violated based on the record that I have been
8 able to make at this point.

9 THE COURT: I am inclined to agree with you. I
10 just don't see how you can say that he has the wherewithal
11 to pay anything.

12 MR. McENANY: The last time I was here I was
13 principally concerned with what seemed to me to be a failure
14 to be fully forthcoming as far as explaining his finances to
15 the Probation Department is concerned. We could obviously
16 spend a lot more time on his finances, but that would not be
17 profitable in a setting like this.

18 It seems to me that he is going to have to
19 continue to maintain his financial records for such review
20 as the Probation Department deems appropriate under the
21 circumstances.

22 At this moment I don't see any way to try to make
23 some restitution happen in the next little while, which is
24 regrettable, because, you know, I'm thinking particularly of
25 the fraud on the consumers as to which there has been no

Festinger - cross

62

1 recompense in any sense of the word, and that I find a bit
2 troubling. But I can't disagree, I don't see where there is
3 any possibility of any meaningful payment toward restitution
4 on this amount at that time.

5 So I guess we should probably be continued on his
6 probation with continued review.

7 I don't want to soak up the Probation
8 Department's resources. I see no alternative.

9 THE COURT: Neither do I. But by the same token,
10 although I'm not from Missouri, I do tend, if not to be
11 cynical, to be questioning. Based on the record before me,
12 I don't find any violation of probation. I cannot make a
13 finding that he violated probation.

14 But I do direct and I do want him to supply to
15 the Probation Department as they require it any financial
16 data that they want, and I direct that he supply to the
17 Probation Department a copy of his 1997 personal income tax
18 return when he files it.

19 Have you gotten an extension, Mr. Festinger, or
20 are you going to have to pay it and file, if you have to
21 pay, by April 15, like everybody else?

22 THE WITNESS: Probably be extended, your Honor.

23 THE COURT: It probably would be extended.

24 Well, if you request an extension, I want you to
25 let the Probation Department know you are requesting an

82kyfesc

63

Festinger - cross

1 extension, and when you ultimately file it I want the
2 Probation Department to be supplied with a copy of your
3 personal income tax return, and I also want any corporate
4 tax returns that are filed supplied to the Probation
5 Department, that is, for each of these five companies.

6 Do you understand that, sir?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. And I continue him on
9 probation.

10 Is there anything else?

11 MR. McENANY: I can't think of anything at the
12 moment, your Honor. We will try to stay on top of it and if
13 the Probation Department can --

14 THE COURT: Okay. I will be out of the district
15 for a while in March, but other than that I plan to be here,
16 so if anybody needs me, contact my chambers.

17 MR. McENANY: Your Honor, I would like to thank
18 the court for its time in this matter.

19 THE COURT: My pleasure.

20 MR. ROSS: Thank you.

21

22

23

24

25